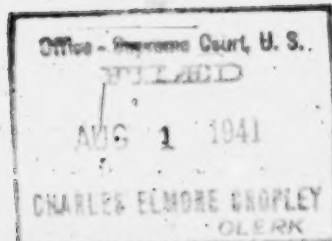




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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941

No. 95

THE PEOPLE OF PUERTO RICO,
Petitioner,
vs.

RUSSELL & Co., S. EN C.,
Respondent.

REPLY BRIEF FOR PETITIONER,
IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

Very little reply seems necessary. The essentials appear plain.

1. The insular executive authorities negotiating the 1914 contracts possessed no power to deal with anything except the *quantum* of the water to be delivered. The Circuit Court of appeals so held in construing the contracts twenty years ago,¹ and such was likewise the insular Supreme Court's interpretation of the 1913 statute under which the contracts were made (R. 156).

2. The insular officials did not try to do anything more. That is the insular Supreme Court's interpretation of these contracts, originally drawn in the Spanish language. The contracts say nothing whatever about the cost of delivering

¹ *People of Porto Rico v. Russell & Co.*, 268 Fed. 723, 726; Petition for Certiorari, p. 3.

the water, or about taxes. As the insular Supreme Court says (R. 156, *supra*; Petition, p. 3):

"even if a clause like that had been included, we apprehend that it would have been void." (C.)

3. That interpretation of the contracts by the insular Supreme Court is not only in harmony with the limitations on the powers of the executive officials making them under the authority conferred by the Act of 1913, and with the language of the contracts themselves, but is also in harmony with the general doctrine that, as against the government, a contract is not to be extended beyond its express terms [*Confer*, Petition, p. 12, and authorities cited]. The applicability of this doctrine is not questioned by respondent.

4. Plainly, the insular Supreme Court's interpretation of these local contracts originally drawn in the Spanish language, and made pursuant to the limitations imposed upon the powers of the insular officials making them by the local insular statute of 1913, is not an unreasonable interpretation. Certainly, to say the very least of it, it is surely not so "patently erroneous", nor so "inescapably wrong", as to authorize the Circuit Court of Appeals to override it (*Sancho Bonet, Treasurer vs. Texas Co.*, 308 U. S. 463, 471; *Same vs. Yabucoa Sugar Co.*, 306 U. S. 505, 509-511), particularly in view of the fact that it is an interpretation of contracts originally drawn in the Spanish language and dealing with rights arising out of the ancient Spanish water rights law system (*Diaz vs. Gonzalez*, 261 U. S. 102, 105-106).²

5. This is reinforced by a consideration of the general doctrine that, as between two possible interpretations of a statute,—or of a contract upon the interpretation of which the validity of a statute depends, as here,—that interpretation is to be preferred which will sustain the validity of the statute.

²*Confer*, Petition for Certiorari, pp. 23-24.

6. Upon the other branch of respondent's contention below, upon which the Circuit Court of Appeals found it "unnecessary to pass" (R. 191; 118 F. (2d) 225, 231), viz., the contention that "there was an undue delegation of legislative power to the Commissioner of the Interior in the computation of the tax",—which was carefully considered and overruled by the insular Supreme Court, interpreting this local statute otherwise on that point (*Opinion*, R. 151-156),³—respondent's brief (pp. 9-11) presents nothing showing any unreasonableness whatever in the insular Supreme Court's interpretation of this phase of the statute.

7. The other contentions presented by respondent below, and adverted to by it here (*Brief*, pp. 12-16) were overruled by the insular Supreme Court; and were disregarded by the Circuit Court of Appeals. The concessionaires' water rights under the old Spanish concessions were not touched in any way, either by the statutes of 1908, 1913, or 1921, or by the contracts; and, plainly, respondents were never denied opportunity to be heard.

8. Respondent questions (*Brief*, "VII", pp. 16-17) our suggestion (*Petition*, "*Reasons for Granting the Writ*", pp. 7-8) that in such a case as this, involving the validity of a Territorial statute where its validity turns upon its interpretation and the interpretation of local contracts, and its validity has been upheld by the local court of last resort upon that court's interpretation of the statute and the contracts,⁴ and the local Supreme Court's interpretation of the statutes and the contracts have been overruled by the Circuit

³ *Confer*, *Petition for Certiorari*, note 4, pp. 5-6. As there pointed out, the insular Supreme Court, as to this point, interprets the insular statute in question, Act No. 49 of 1921, as delegating only administrative, and not legislative, powers. The interpretation appears to be wholly reasonable.

⁴ And particularly where, as here, it rests upon the local interpretation of contracts and statutes originally made in the Spanish language, and in view of the system of local laws inherited from Spain.

Court of Appeals, resulting in the Circuit Court of Appeals striking down the Territorial statute,—that in such a case, almost as a matter of course, this Court might well make a practice of granting certiorari, and of not allowing a Territorial statute to be stricken down upon the Circuit Court's overruling of the local interpretation of the contracts and the statute, without a re-examination by this Court; in analogy in a general way with the requirement of paragraph (b) of Section 240 of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 939, with relation to cases involving the striking down of State statutes.

It is confidently submitted that, as submitted in our Petition, in such a case an act of the Territorial Legislature should not,—in reasonable consideration of the respect to be shown both to the presumption of the validity of an enactment of the Legislature and also to the presumption of the correctness of the local Territorial Supreme Court's interpretation of local statutes and contracts,—be stricken down, without examination by this Court.

It is therefore very earnestly believed by the insular government that certiorari should issue in this case.

Respectfully submitted,

WILLIAM CATTON RIGBY,
Attorney for Petitioner.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

